

Decedent died testate on Date 1, survived by Spouse, who was not a United States citizen as of Date 1. On Date 2, Spouse established a Qualified Domestic Trust (QDOT) (Trust) pursuant to § 2056A and funded Trust with assets that would have passed outright to Spouse from Decedent's estate. Spouse, Child 1, and Child 2 were the initial co-trustees of Trust. Child 1 and Child 2 are citizens of the United States.

It is represented that the executor of Decedent's estate timely filed the Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) on or about Date 3. The executor made an election (on Schedule M of the return) under § 2056A(d) to treat Trust as a qualified domestic trust and claimed an estate tax deduction for the value of the property transferred to Trust.

On Date 4, Spouse became a United States citizen. It is represented that Spouse had continuously resided in the United States from the date of Decedent's death until the time that Spouse became a United States citizen.

Subsequent to Decedent's death, Accountant was engaged for all tax reporting requirements for the Trust. At no time did Accountant advise the co-trustees of the need to file a final Form 706-QDT (U.S. Estate Tax Returns for Qualified Domestic Trusts) as required under § 20.2056A-10(a)(2), upon Spouse becoming a United States citizen. Accordingly, co-trustees did not file a final Form 706-QDT. Spouse died on Date 5. In the administration of Spouse's estate, Child 1 and Child 2, as successor co-trustees, became aware of the requirement to file a final Form 706-QDT by April 15 of the subsequent year after the spouse obtains citizenship.

You request an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to file a final Form 706-QDT notifying and certifying to the Internal Revenue Service that Spouse has become a United States citizen, as required by § 20.2056A-10(a)(2).

## LAW AND ANALYSIS

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate is to be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse. Sections 2056(d)(1)(A) and 2056(d)(2)(A) provide that if the surviving spouse of the decedent is not a United States citizen, the marital deduction is not allowed under § 2056(a), unless the property passes to the surviving spouse in a qualified domestic trust.

Under § 2056A(a), a qualified domestic trust is any trust in which: (1) the trust instrument requires that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation and provides that no distribution (other than income) may be made from the trust unless a United States trustee has the right to withhold from such distribution the tax imposed under § 2056A(b) on the distribution; (2) the trust meets the requirements as the Secretary may by regulations prescribe to

ensure collection of the tax imposed by § 2056A(b); and (3) an election is made by the executor of the decedent with respect to the trust.

Under § 2056A(b)(1)(A), an estate tax is imposed on any distribution of principal from the qualified domestic trust (other than on account of hardship) before the date of death of the surviving spouse. In addition, under § 2056A(b)(1)(B) an estate tax is imposed on the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

Under § 2056A(b)(12) and § 20.2056A-10(a)(1) and (2), a QDOT is no longer subject to the estate tax imposed under § 2056A(b) if the surviving spouse becomes a citizen of the United States, and the spouse was a resident of the United States at all times after the death of the decedent and before becoming a United States citizen, and the U.S. Trustee of the qualified domestic trust notifies the Internal Revenue Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706-QDT on or before April 15th of the calendar year following the year that the surviving spouse becomes a citizen, unless an extension of time of up to 6 months for filing is granted under § 6081.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). The time for filing the notice required under § 20.2056A-10(a)(2) is not expressly prescribed by statute. Accordingly, co-trustees may seek an extension of time to file the required notice and certification with the Internal Revenue Service that Spouse has become a United States citizen.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government. Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, co-trustees are granted an extension of time of 120 days from the date of this letter to file with the Internal Revenue Service the required notice and certification that Spouse has become a citizen of the United States. The required notice and certification should be made on a Form 706-QDT. The Form 706-QDT should be filed with the Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the Form 706-QDT. A copy is enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: Melisa C. Liquerman  
Melissa C. Liquerman  
Chief, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

cc: